

REMARKS

In view of the following remarks, the Examiner is requested to allow Claims 1, 3-8, 10, 11, 13, 14 and 16-20, the only claims pending and under examination in this application following entry of the above amendment.

Claim 8 has been amended to clarify the language. Support for this amendment may be found throughout the specification and claims as originally filed. Accordingly, no new matter has been added. As no new matter has been added by way of this amendment, entry thereof by the Examiner is respectfully requested.

Claim Rejections under 35 U.S.C. § 112, second paragraph

All claims have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Examiner has asserted the phrases "Inorganic compounds" and "Naturally occurring" is not limiting.

The phrase "inorganic compounds" was removed from the claims in the last correspondence. (see Amendment and Response, dated December 26, 2006). Additionally, Claim 1 was also amended to state "non-naturally occurring pesticide". (See Amendment and Response dated December 26, 2006.) Claim 4, which outlines the group from which the pesticides may be drawn is thus limited by this, and should be taken to include only non-naturally occurring botanicals, antibiotics, carbamates, imides, strobylurines, etc.

As such, the claims satisfy the requirements of 35 U.S.C. 112, second paragraph and this rejection may be withdrawn.

Claim Rejections under 35 U.S.C. § 102

Claims 1, 3-5, 7,8,11, 17-19 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Spengler (Pat. No. 6,669,879).

According to the M.P.E.P. § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co., 2 USPQ2d 1051 (Fed. Cir. 1987). Additionally, the identical invention must be shown in as complete detail as is contained in the claim. Richardson v. Suzuki Motor Co., 9 USPQ2d 1566 (Fed. Cir. 1990).

The Office asserts that Spengler discloses a pesticide composition of chemical pesticides, crop treatment agents, vitamins, carbon-skeleton-sucrose, fats, cofactors, minerals and trace minerals, macro and micro nutrients and complexing agents.

Spengler does not disclose each and every element in the current invention. Specifically, Spengler does not disclose that the composition MUST comprise ALL of the following elements: (a) a non-naturally occurring pesticide; (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component. Spengler does not specify that the number and type of active ingredients MUST be limited to the claimed elements recited in the present claims.

Spengler also does not disclose an identical invention in as complete detail as is contained in the current claim 1 and its dependent claims. Spengler includes multitudinous filler options, ranging from 'crop treatments' to pharmaceutically active components, human food products to fragrances. (Col 6, lines 44-54) In offering such a wide array of possible fillers, Spengler does not disclose a pesticide composition that must include all five of the claimed elements (a) – (e), but rather a composition that could include anything, including a composition that has none of the claimed limitations of claim 1 and its dependent claims.

Thus, Spengler discloses neither each and every element of the instant invention nor the invention in as complete detail the claims herein presented. Accordingly, this claim may be withdrawn.

Claim Rejections under 35 U.S.C. § 103

Claims 1, 3-8, 10, 11, 13, 14 and 16-20 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Spengler (6,669,879) in view of McCoy (5,453,277). The Office asserts that Spengler provides the instant invention of a pesticide that can be combined with fertilizers, but leaves it to the artisan to determine desired specific macro, micro & energy source nutrients and co-factors & there amounts. The Office asserts that this deficiency is made up by McCoy, which provides a plant treatment agent which combines the Spengler minerals with molasses and macro nutrients.

According to the MPEP §141.01(a):

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); Wang Laboratories Inc. v. Toshiba Corp., 26 USPQ2d 1767 (Fed. Cir. 1993); and State Contracting & Eng'g Corp. v. Condotte America, Inc., 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of

endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

Thus, a reference is not analogous, and thus can not be used under 35 U.S.C. §103(a), if the reference is not in the field of applicant's endeavor, or if the reference is not reasonably pertinent to the particular problem with which the inventor was concerned.

Spengler discloses a process aimed at the appropriate manufacture of solid dosing forms. Crop treatments, vitamins and insecticides are various independent filler material that can be successfully encapsulated using the method disclosed by Spengler.

However, Spengler's process is neither in the field of plant treatment, nor is it reasonably pertinent to relieving the problem of phytotoxicity caused by pesticide treatments by combining a pesticide with an energy source, and vitamins and minerals. As such, there is no motivation to combine Spengler with any reference concerned with plant treatment.

Since Spengler is not 'analogous art', it cannot be used as prior art under 35 U.S.C. §103(a). Accordingly, this rejection may be withdrawn.

Claims 1, 3-8, 10, 11, 13, 14 and 16-20 have been further rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Summers (3,514,516) in view of Beaty (5,634,959), Kinnersley (4,976,767), Wahlberg (3,231,365) and Van Barneveld (6,254,654).

The Office asserts that Summers provides a nematocidal & fungicidal composition, specifically sodium aluminofluorides, to soil, with reduction of phytotoxicity that are combinable with fertilizers. The Office asserts that Beaty discloses a fertilizer formulation which includes a complexer, macro and micro minerals, and vitamins and

cofactors in the form of fish solubles and seaweed. The Office asserts that Kinnersley provides a fertilizer formulation which includes an energy source, macro minerals and a complexing agent. The Office asserts that Wahlberg discloses a fertilizer in which the required nutrients and amounts depend upon the crop of concern, that the composition also includes macro and micro nutrients and energy sources of seaweed, animal meal and vegetable oils. The Office asserts that Van Barneveld provides a fertilizer that can be combined with other agents, which include macro and micro nutrients as needed by the crops, as well as a yeast cofactor, sugars and molasses.

The Office asserts that it would have been obvious to a person of ordinary skill in the art to use a pesticide/fertilizer combination choosing the specific pesticide/other components as specified in the above references and as needed by the crops.

The Applicant respectfully disagrees. Under MPEP §2131, to establish a prima facie case of obviousness, the prior art reference, or references when combined, must teach or suggest all the claim limitations. In re Royka, 180 USPQ 580 (CCPA 1974).

An invention is 'obvious to try', but not obvious under 35 U.S.C. §103, "where the prior art [gives] either no indication of which parameters [are] critical or no direction as to which of many possible choices is likely to be successful." Merck & Co., Inc. v. Biocraft Labs., Inc., 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting In re O'Farrell, 853 F.2d 894, 903 (Fed. Cir. 1988)). "It is insufficient [when examining obviousness] to select from the prior art the separate components of the inventor's combination, using the blueprint supplied by the inventor." Fromson v. Advance Offset Plate, Inc. 225 USPQ 26 (Fed. Cir. 1985).

None of the cited references teach or suggest a composition which MUST be limited to (a) a non-naturally occurring pesticide; (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component, combined with a complexing agent. The

Examiner asserts that the amounts of these items are result effective parameters, chosen to meet the needs of a specific crop or field. However, the limitation of the composition to these six components, and the specific identity of each of the components, is not taught by any combination result effective parameters.

The references only disclose the components piecemeal among their many other components, with no instruction of which pieces of among the many to chose. As shown in the specifications, combination of a pesticide with an assimilable carbon-skeleton energy component a macronutrient, a micronutrient a vitamin/cofactor leads to nearly 175% improvement in growth in tomato plants as compared to treatment with ONLY with the pesticide. (page 36, results table). However, mere combination of a pesticide with only one of the ingredients, namely sucrose, leads to only 150% improvement as compared to treatment with only the pesticide. (page 31, results table).

Following the Examiner's reasoning would lead to myriad other different combinations of pesticide and fertilizers. These combinations could consist of 4 components and still be within the reasoning of the Examiner. These combinations could not include micronutrients and still be within the reasoning of the Examiner. There is no teaching which shows that it is beneficial to limit the composition to those delineated in claimed elements (a) – (e).

Thus, the combination of Summers in view of Beaty, Kinnersley, Wahlberg, and Van Barneveld provides no instruction, such as is found in the instant claims, which arbitrarily limits or expands those 'as needed' choices to a compound consisting of those elements claimed in (a) – (e).

Thus, the combined references of Summers in view of Beaty, Kinnersley, Wahlberg, and Van Barneveld do no teach or disclose all of the claim limitations. Accordingly, this objection may be withdrawn.

CONCLUSION

The Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number YAMA-009.

Respectfully submitted,
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By: _____

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